In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.12904 of 2004

Date of Decision: 5.7.2007

Rajinder Jit Singh.

…Petitioner.

Versus

The Registrar, Punjabi University, Patiala and Another.

…Respondents.

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE AJAI LAMBA

Present: Mr.Ashish Gupta, Advocate
for the petitioner.

Mr.Vipul Jindal, Advocate
for respondents.

JUDGMENT

ADARSH KUMAR GOEL, J.

This petition challenges order (Annexure P8) terminating the services of the petitioner. The petitioner was employed as a Junior Assistant and was deputed as Junior Center Superintendent during examination for Post Graduate Diploma in Computer Application. It came to the notice of the University that the petitioner had helped some of the examinees to tamper with the answer sheets. Accordingly, a Show Cause Notice alleging misconduct against the petitioner dated 16.10.2002 (Annexure P1) was served to which reply was filed being Annexure P5. After considering the reply

dated 10.1.2003 (Annexure P5), Inquiry Officer was appointed who submitted his report dated 11.12.2003 (Annexure P6) holding the charge against the petitioner to be proved. Taking into account the said Inquiry Report, order dated 27.5.2004 (Annexure P8) was passed terminating the services of the petitioner.

In the writ petition, impugned order of dismissal has been challenged, mainly on the ground that the order was passed by relying on the preliminary Inquiry Report, without issuing charge sheet, list of allegations and without conducting regular inquiry.

We have perused the Show Cause Notice (Annexure P1) which specifically makes an imputation of dereliction of duties and breach of faith against the petitioner. The said charge is based on the preliminary Inquiry held by Dr.S.C.Gupta as mentioned in the said Show Cause Notice, a copy of which was also annexed with the Show Cause Notice. The petitioner gave reply on merits vide Annexure P5. Thereafter, the Inquiry Officer conducted an inquiry.

We have gone through the Inquiry Report dated 29.7.2003 (Annexure P6) which cannot be termed as preliminary inquiry. From para 3 of the said Inquiry Report, we find that the Presenting Officer examined the witnesses mentioned therein. From para 5, we find that on behalf of defence, three witnesses were examined. The entire evidence was considered and a finding was recorded. Such an Inquiry Report cannot be said to be violative of natural justice, by any standard nor can be held to be only a preliminary inquiry. After submission of Inquiry Report, the petitioner was given an opportunity of being heard and the petitioner submitted his reply dated 19.3.2004 (Annexure P7) which was also taken into account before passing the impugned order.

Except that, charge sheet has been termed as Show Cause Notice, no prejudice whatsoever has been caused to the petitioner. The petitioner has been given full opportunity of meeting the charges and leading evidence. His response to the Inquiry Report has also been duly considered. In these circumstances, the impugned order is not liable to be interfered with.

We may refer to the observations made by Hon'ble the Supreme Court in a recent judgment in ***Mohd. Sartaj v. State of U.P.,(2006) 2 SCC 315***:-

> **"18.** In *Aligarh Muslim University* v. *Mansoor Ali Khan, AIR 2000 SC 2783,* this Court considered the question whether on the facts of the case the employee can invoke the principle of natural justice and whether it is a case where, even if notice has been given, result would not have been different and whether it could be said that no prejudice was caused to him, if on the admitted or proved facts grant of an opportunity would not have made any difference. The Court referred to the decisions rendered in *M.C. Mehta* v. *Union of India(1999) 6 SCC 237,* the exceptions laid down in *S.L. Kapoor v. Jagmohan,,(1980) 4 SCC 379,* and *K.L. Tripathi* v. *State Bank of India, AIR 1984 SC 273,*where it has been laid down that not mere violation of natural justice but *de facto* prejudice (other than non-issue of notice) has to be proved. The Court has also placed reliance in the matter of *State Bank of Patiala* v. *S.K. Sharma,(1996) 3 SCC 364,*and *Rajendra Singh* v. *State of M.P.(1996) 5 SCC 460,* where the principle has been laid down that there

must have been some real prejudice to the complainant. There is no such thing as merely technical infringement of natural justice. The Court has approved this principle and examined the case of the employee in that light. In *Viveka Nand Sethi* v. *Chairman, J&K Bank Ltd.,(2005) 5 SCC 337,* this Court has held that the principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. In another recent judgment in *State of U.P.* v. *Neeraj Awasthi,(2006) 1 SCC 667,*while considering the argument that the principle of natural justice had been ignored before terminating the service of the employees and, therefore, the order terminating the service of the employees was bad in law, this Court has considered the principles of natural justice and the extent and the circumstances in which they are attracted. This Court has found in *Neeraj Awasthi case (supra)* that if the services of the workmen are governed by the U.P. Industrial Disputes Act, they are protected under that law. Rules 42 and 43 of the U.P. Industrial Disputes Rules lay down that before effecting any retrenchment the employees concerned would be entitled to notice of one month or in lieu

thereof pay for one month and 15 days' wages for each completed year of service by way of compensation. If retrenchment is to be effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise. The principles of natural justice would be attracted only when the services of some persons are terminated by way of a punitive measure or thereby a stigma is attached. Applying this principle, it could very well be seen that discontinuation of the service of the appellants in the present case was not as a punitive measure but they were discontinued for the reason that they were not qualified and did not possess the requisite qualifications for appointment.

Accordingly, the writ petition is dismissed".

(Adarsh Kumar Goel)
Judge

July 5, 2007
"DK"

(Ajai Lamba)
Judge